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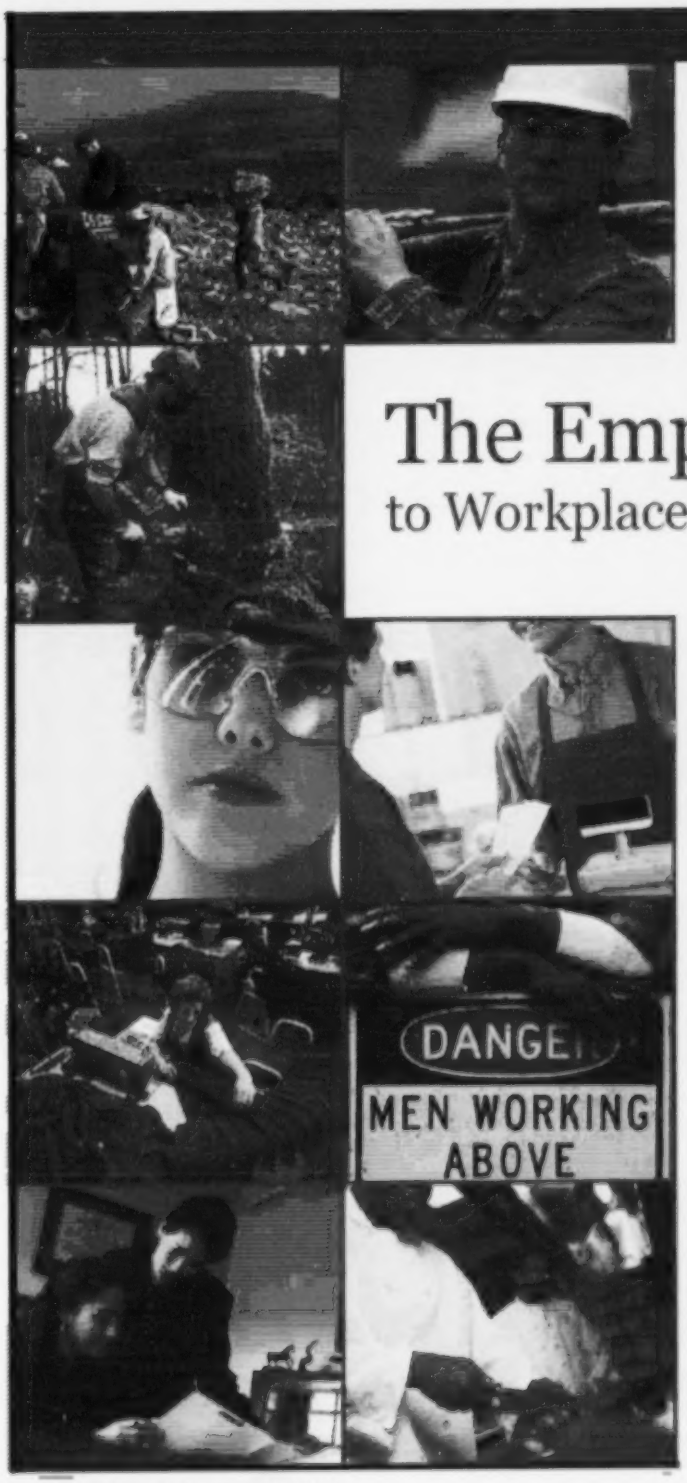

The Employer's Guide
to Workplace Safety and Insurance

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Revised August 2011

The Employer's Guide to Workplace Safety and Insurance

This guide is designed to help non-construction employers manage workplace safety and insurance, and provides basic information and answers to frequently asked questions.

Construction employers can download ***The Construction Employer's Guide to Workplace Safety and Insurance*** from our website at www.employeradviser.ca, as the obligations regarding re-employment for construction workers are different.

Since the workplace safety and insurance system is complex, you may have more questions than we could include in this guide. If you need help to apply this information to your particular situation, please contact us:

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Telephone: 416-327-0020 / 1-800-387-0774
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Send us your e-mail questions: askoea@ontario.ca

The information in this guide is based on the *Workplace Safety and Insurance Act, 1997*, and subsequent amendments.

The Employer's Guide to Workplace Safety and Insurance

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Office of the Employer Adviser

The OEA, and how it can help you

The Office of the Employer Adviser (OEA) is an independent agency of the Ontario Ministry of Labour (MOL) and has been helping Ontario employers since 1985. Our experts can help you manage workplace safety and insurance costs (formerly referred to as "workers' compensation") to give your business a competitive advantage. We provide expert advice to any size employer, and represent primarily employers who employ fewer than 100 employees. We also offer information on our website. We don't charge any fees for our services because we are funded through the premiums or administration fees you pay to the Workplace Safety and Insurance Board (WSIB).

Introduction

Overview of the workplace safety and insurance system

Workplace safety and insurance is a no-fault insurance system, managed by the WSIB, for work-related injuries and diseases that is governed by the *Workplace Safety and Insurance Act, 1997* (WSIA).

Registration

Who needs to register with the WSIB

If you hire workers, including family members, or apprentices for your business you must register with the WSIB within 10 days of hiring your first worker if you are in a compulsorily covered industry.

Likewise, if you acquire any or all of an existing compulsorily covered business with employees, you must register with the WSIB within 10 days.

You should always check with the WSIB, preferably in writing, to determine whether or not you need to register.

Precautions when acquiring an existing business

If you acquire an existing business you will inherit the seller's accident history and financial obligations, including any money owed to the WSIB. To protect yourself, you should get a purchase certificate from the WSIB. A purchase certificate is a document the WSIB will issue if the original employer's account is in good standing, on the date the business is sold.

If a purchase certificate is issued, the WSIB will not hold the purchaser liable for any amounts charged to the original owner's account, up to the date the business changed hands.

For audit purposes, purchasers must keep a copy of any purchase certificate received. Both the purchaser and the vendor are required to keep a copy of any purchase certificate issued *directly* to them by the WSIB.

Registration for independent operators/contractors

If you have no employees, and meet the WSIB's criteria for independent operator (IO) status, you are not required to register with the WSIB. You should check with the WSIB, preferably in writing, to determine whether or not you need to register.

How to register

Registration forms are available on the WSIB's website or through its e-registration service. You can also call the WSIB at 1-800-387-0080 to have one sent to you.

There currently are two types of registration processes depending on whether you are an employer, or an individual applying as an IO, a sole proprietor, a partner or an executive officer of a corporation.

1. Employer registration

This process is for a business that hires one or more workers.

2. Optional insurance request/change

This is the voluntary registration process for IOs, sole proprietors, partners and executive officers of a corporation. WSIB coverage is not automatically granted. The WSIB will decide whether an individual qualifies for optional insurance.

Coverage

Who is covered by the WSIA

Workers are covered by the WSIA. A "worker" includes anyone employed under a contract *of* service or apprenticeship with an employer carrying on a business listed in Schedule 1 or Schedule 2 of the WSIA.

Domestic workers who are directly hired and paid by private households to work more than 24 hours a week for one family are also covered under the WSIA. This includes nannies, babysitters, nursemaids, housekeepers, gardeners, cooks, companions and handy persons.

Who can claim benefits under the WSIA

Workers or their dependents can submit a claim for WSIB benefits if the worker suffers an injury, disease or death that arose out of and in the course of employment, and the following three conditions are met:

1. the worker's employer is subject to compulsory coverage under the WSIA
2. the individual is considered to be a worker under the WSIA (see above), and
3. the injury happened in Ontario, or the criteria specified in ss. 18-20 of the WSIA are met if the injury happened outside of Ontario.

Industries or business activities *not* covered by the WSIA

There are over 100 industries that are omitted from mandatory coverage because they are not listed in either Schedule 1 or Schedule 2. These include banks, insurance companies, trust companies and other financial institutions, law firms, real estate agencies, business associations, recreational and social clubs, trade unions, private schools and universities, children's camps, travel agencies, and health clubs.

These employers can apply for "by application" coverage under Schedule 1. If the WSIB accepts their application, these by application employers are treated the same as Schedule 1 employers. Any application employers who subsequently want to cancel their application coverage must pay a departure fee.

How to find out if your business is covered

You can find detailed information about the coverage status of all businesses and industries in Ontario by referring to the WSIB's *Employer Classification Manual* (ECM) on the WSIB's website.

Employer Costs

WSIB premiums

The WSIB maintains an insurance fund that is made up of annual premiums paid by Schedule 1 employers. An employer's premium payments are based on the WSIB's classification of the employer's business activity (which determines the premium rate) and the employer's total insurable payroll. The annual premium paid by an employer is equal to its annual insurable earnings (payroll costs), multiplied by the premium rate, and divided by 100.

$$\text{Premium} = \frac{\text{Annual Insurable Earnings} \times \text{Premium Rate}}{100}$$

Each fall, the WSIB sets the premium rate for each rate group, and announces the maximum insurable amount of workers' earnings, for the following calendar year.

Employers pay premiums only up to the insurable amount. The maximum insurable earnings ceiling for an individual worker in 2011 is $79,600.

Schedule 2 employers pay the full cost of accident claims filed by their workers, plus an administration fee. The 2011 provisional administration rate for provincially regulated employers is 22.20%.

Additional costs you could incur

The WSIB may levy penalties for various offences, including

- failing to register your business within 10 days of hiring your first worker
- failing to report an accident
- not reporting, or incorrectly reporting, your premium information
- underestimating your earnings
- knowingly making a false or misleading statement to the WSIB, and
- wilfully failing to inform the WSIB of a material change in circumstances.

Individuals may be fined up to $25,000 and/or imprisoned for up to six months for each offence. Corporations are liable to a fine of up to $100,000 for each offence.

As of July 15, 2011, employers who are found in breach of their WR and/or re-employment obligations are also subject to additional financial penalties that are outlined in the WR and re-employment sections of this guidebook.

Experience rating programs

Experience rating programs are primarily intended to achieve greater insurance equity in premium pricing for Schedule 1 employers based on their accident and claim cost experience in comparison to the industry rate group average. Experience rating also plays a role in reducing accidents and occupational diseases, and promoting WR.

There are three experience rating programs:

- Merit Adjusted Premium (MAP)
- New Experimental Experience Rating (NEER), and
- Council Amendment to Draft #7 (CAD-7).

All of the experience rating programs are currently under review as part of the WSIB's year-long Funding Review. The consultation period is expected to end in November 2011.

1. MAP

MAP is the merit incentive program for all employers, including construction employers, with annual premiums between $1,000 and $25,000 excluding any adjustment by any of

the WSIB's experience rating programs. Once you qualify for MAP you will remain in MAP for at least 3 years, despite premium fluctuations below $1,000 and over $25,000.

MAP reviews the number of claims with more than $500 in costs over a three-year period. Claims over $500 are included in your accident record, while claims under $500 are not included. Employers who have no claims with costs over $500 during the period in review will receive a 5-10% discount off their premiums. Employers who have one or more claims with costs over $500 during the period in review will receive a premium increase of up to 50%. Any claim costing over $5,000 will result in an automatic 10% surcharge on the employer's premium rate, plus any other MAP adjustment.

All experience rating programs automatically exclude the costs of claims arising from the following long-latency diseases from its calculations: Acquired Immune Deficiency Syndrome (AIDS), carcinoma, chest diseases due to aluminum and cadmium exposure, chronic noise exposure, chronic obstructive lung disease, pneumoconiosis due to asbestos, silica, talc, hard metal (cobalt), and other mineral dust, and Scleroderma. The rate group shares the costs of these claims.

A fatality claim will automatically result in a 25% surcharge on the employer's premium rate, plus any other MAP adjustment.

A MAP adjustment for a claim involving a third party is determined by pro-rating the claim costs and any special adjustments according to the percentage of liability of the parties involved.

2. NEER

NEER is the experience rating program for non-construction employers that pay annual premiums over $25,000. NEER compares the employer's actual claim costs over a four-year period, to the expected costs for the size and type of business. If the actual claim costs are lower than expected, the employer is eligible for a refund. If the actual claim costs are higher than expected, the employer receives a surcharge.

To protect employers from unlimited claim costs, there is a limit on the maximum cost assessed for any one claim ("claim cost limit"), and also on the total amount assessed by NEER for all of your claims ("firm cost limit" or "organization cost limit"). The firm cost limit is four times the expected cost. The maximum surcharge is three times the maximum rebate. The claim cost limit is five times the maximum insurable earnings.

In the year a traumatic fatality occurs, a premium increase equivalent to the NEER refund an employer is entitled to receive is applied to the employer of the deceased worker – in effect eliminating the NEER rebate for that year.

3. CAD-7

CAD-7 is the experience rating program for construction employers that have annual premiums over $25,000. CAD-7 compares the employer's actual number (frequency) of

claims over two years, and claim costs over five years, to the expected frequency of the rate group and costs associated with the size of the workforce.

How to control the size of your rebate or surcharge

The best way to control the size of your rebate or surcharge is to reduce claim frequency and claim costs through prevention, WR, and cost relief measures. The most effective way to reduce claim frequency is through prevention, which can be as simple as complying with employer obligations under the *Occupational Health and Safety Act* (OHSA). Once an injury has occurred it is important to return the injured worker to work as quickly and safely as possible. More prevention assistance can be obtained from the Health and Safety Associations (HSAs) at www.healthandsafetyontario.ca.

Second Injury and Enhancement Fund (SIEF), cost transfer and third party cost relief are three cost relief methods that Schedule 1 employers may use to reduce the cost of a claim. The WSIB either grants or denies cost relief based on the merits of each request.

SIEF transfers loss of earnings (LOE) benefits and health care costs from a Schedule 1 employer to the employer's rate group. Employers may receive SIEF when a worker's pre-existing condition or prior disability contributed to the work-related injury, or prolongs or enhances the period of the work-related disability. You can apply for SIEF relief by writing to the WSIB Case Manager and outlining the pre-existing condition(s). The WSIB may grant relief based on the supporting information in the claim file. The amount of relief granted depends upon the severity of the injured worker's pre-existing condition and the severity of the injury. The amount granted could be between 25% and 100%. SIEF does not apply to Schedule 2 employers.

Cost transfers allow employers in Schedule 1 to apply to have the claim costs transferred to another Schedule 1 employer due to negligence on the part of the other Schedule 1 employer or worker. A request for a cost transfer should be made in writing to the Case Manager.

Third party cost relief allows a Schedule 1 employer to ask the WSIB to recover the accident costs for the employer's injured worker if the injury is caused by a third party who is neither another Schedule 1 employer nor a Schedule 1 worker. Any money recovered from the third party will be used to offset the injury employer's costs.

Schedule 2 employers can directly sue anyone, other than their own employees, who may have caused the injuries to the Schedule 2 worker. They do not need the WSIB to initiate legal action.

Independent Operators

Identifying IOs

People who work under contracts *for* service and do not employ any workers are considered IOs. An IO agrees to do specific work in return for payment. The payer does not necessarily control the way in which the work is done, or the times and places it is done.

How to ensure an IO you hire is not treated as a worker by the WSIB

You must follow WSIB procedure. If you don't, the WSIB may deem the IO to be your worker, and require that premiums be paid on the labour portion of the contract with the IO.

The WSIB has six industry-specific questionnaires (for construction, trucking, taxis, retail, couriers and logging), and a general questionnaire for individuals working in all other industries. These questionnaires are in the Employer Forms section of the WSIB's website.

Both the principal and the IO must complete and sign the appropriate questionnaire, and submit it to the WSIB. WSIB decision-makers review the questionnaire and any other information that is relevant to the terms and conditions for service, i.e., invoices, contracts, purchase orders, business cards, etc. When all of the criteria considered together indicate the person has a separate business that is not integrated into the employer's business, the WSIB considers that person to be an IO. If, however, the WSIB decides the person does not have a lot of independence in doing the work and that his/her decisions have an insignificant effect on his/her opportunity to earn a profit or suffer a loss, it considers that person to be a worker. The questionnaire is necessary even if the IO is incorporated.

How to protect your business from WSIB IO charges

You should fill out and submit a questionnaire if you are planning to hire an IO, *before* the IO does any contract work for you. If the WSIB concludes the person is a worker, you will need to pay premiums to the WSIB for that worker's wages and comply with all other WSIB policies. If the person is an IO, you need to take action to protect yourself and your business from financial risk.

Ask the IO if he/she has purchased optional insurance from the WSIB. If the answer is "yes," get a clearance from the WSIB that confirms the IO is registered with the WSIB and has met all payment and reporting obligations. It waives the WSIB's right to hold the principal responsible for any premiums charged to the IO's WSIB account during the time the clearance certificate is valid. An IO (or his/her dependants) who has WSIB coverage also cannot sue you as a result of a work-related injury, disease or death.

The WSIB's eClearance program is an online service available through the WSIB's website that allows contractors to obtain specific principal-contractor clearances, and allows employers to easily check the validity of a potential contractor's clearance and manage its list of contractors. A clearance is valid for *up to* 90 days, with four "predictable renewal dates" – February 20th, May 20th, August 20th, and November 20th. All clearances expire on those four dates each year.

Individuals who do not wish to use the electronic system have the option of calling the WSIB's Clearance Department at 416-344-1012 / 1-800-387-8638 to request clearances over the phone, or faxing their request to 416-344-3410 / 1-877-849-4882.

Keep proof of all clearances during the WSIB audit period, which is the current year plus two years.

Contracting Out

Get a clearance

Employers who contract with other companies to provide services such as janitorial, electrical, or security will be held responsible for the injury costs of the other company's injured workers for the duration of the contract if the other company is unregistered or in default with the WSIB.

The WSIB may also hold you responsible for any unpaid premiums owed by the contractor on wages paid to his/her workers for the duration of the contract. You may deduct from money payable to the contractor the amount for which the contractor is liable.

The only way to ensure this will not occur is to require a clearance from contractors.

Accidents and Occupational Diseases

Preventing accidents and occupational diseases at your workplace

As an employer, it is not only in your best interest to maintain a healthy and safe workplace and to prevent workplace injuries and occupational diseases, it is also your legal obligation under the OHSA.

a) How the WSIB defines "accident"

According to the WSIA, accidents include

- a chance event caused by a physical or natural incident, i.e., falling off a ladder or frostbite

- a disablement (a condition that has emerged gradually), i.e., carpal tunnel syndrome, and
- a wilful and intentional act, but not an act of the worker, i.e., being assaulted by a co-worker.

b) How the WSIB defines "occupational disease"

An occupational disease includes

- a disease resulting from exposure to a substance that is related to a particular industrial process, trade or occupation, i.e., developing asthma from working in a bakery
- a disease peculiar to, or characteristic of, a particular industrial process, trade or occupation, i.e., the development of lead toxicity is not a disease, but is a precursor that can lead to severe damage of the central nervous system and is compensable prior to developing the disease
- a medical condition that, in the WSIB's opinion, requires a worker to be removed either temporarily or permanently from exposure to a substance because the condition may be a precursor to an occupational disease
- a disease mentioned in Schedules 3 or 4 of O. Reg. 175/98, or
- a disease listed in the WSIA applicable to firefighters and fire investigators.

A worker who suffers from, and is impaired by, an occupational disease is entitled to receive benefits under the WSIA as if the disease were a personal injury by accident.

When you need to report an accident or an occupational disease

Employers must report accidents or occupational diseases to the WSIB by completing the "Employer's Report of Injury/Disease" Form 0007A (Form 7) when an injury or disease causes a worker to

- obtain health care
- be absent from his/her regular work beyond the date of accident
- require modified duties at less than regular pay
- earn less than regular pay at regular work, or
- require modified work at regular pay for more than seven calendar days.

How to determine the date of accident for a disablement claim

In a gradual onset disablement claim, the date of injury is the earlier of the date medical attention is first sought which led to the diagnosis, or the date of diagnosis. This impacts the employer's obligation to re-employ the injured worker and to contribute towards the worker's employment benefits.

What to do if an accident happens

Administer first aid immediately. Immediately arrange and pay for transportation to a medical clinic, a health care practitioner, a hospital or the worker's home, if required. Have someone accompany the injured worker on your behalf, if necessary.

Provide the worker with a copy of the "Functional Abilities Form for Planning Early and Safe Return to Work" Form 2647A (FA form) for the treating health care practitioner to complete and return.

Investigate the accident immediately after first aid/health care treatment has been provided to the worker. Depending on the severity of the accident, obtain a signed statement from the injured worker as soon as possible. If a signed statement is not possible, obtain a statement by phone. Interview everyone who may have seen the accident and get witness statements. Ensure the witness reads and clearly understands the statement, and have the witness sign and date the statement. If statements are provided in another language, identify the interpreter and the language in which the statement was provided. Have a third person witness the interview. Get written statements from any worker who was in view of the accident, but did not see anything. Visit the site of the accident to prepare drawings of the layout of the area and to take photographs of any equipment and materials involved. Do not clean up or re-arrange the site until after the investigation has been completed.

The employer must report the accident to the WSIB by completing a Form 7 within three calendar days of learning of the accident, and the WSIB must receive it within seven business days from when the employer learns about the accident. Section 12 in Block C of the Form 7 says, "If you have concerns about this claim, attach a written submission to this form." If you do have concerns about a particular claim, check the box in section 12 that says "submission attached" and either include your concerns on page 4 of the Form 7 or attach a separate page that explains your concerns about the worker's claim for benefits. You can also provide additional information such as copies of statements, drawings, photographs, etc. This will require the Eligibility Adjudicator to contact you to discuss the issues, before a decision is made. If that does not happen, you should contact the Eligibility Manager. Give the injured worker a copy of the Form 7 and any attachments provided to the WSIB. If the Form 7 is incomplete, late, or if a copy is not given to the injured worker, the WSIB may levy a penalty of $250 for each infraction. The Form 7 is available on the WSIB's website and can be completed and filed online.

The worker must complete, sign and submit the "Worker's Report of Injury/Disease" Form 0006A (Form 6) to the WSIB in order to claim WSIB benefits and consent to the release of functional abilities information to the WSIB and the employer. If the worker does not file a claim for benefits or consent to the disclosure of functional abilities information within the six-month deadline, the WSIB will not provide benefits. The functional abilities information will help the workplace parties (WPPs – workers and employers), union representatives and other authorized representatives, where

applicable, develop an appropriate WR plan for the injured worker. Workers are required by law to give employers access to this information.

The worker must provide the employer with a copy of the completed Form 6 and any attachments at the same time this information is provided to the WSIB.

You must also maintain your contributions to the injured worker's employment benefits (i.e., health insurance, life insurance and pension plan contributions) for one year from the date of accident while the injured worker is off work. These contributions must be maintained provided the injured worker continues to pay his/her share of the contributions. This obligation does not apply to employers participating in multi-employer benefit plans.

When to contact the MOL about a serious work-related injury or disease

If anyone has been critically injured or killed at the workplace, even if they are not a worker, you must directly contact an inspector at the closest MOL office immediately, as well as the joint health and safety committee or health and safety representative and the union if there is one. You must also send written notification to an MOL director, within 48 hours, explaining what happened and providing any information that might be required.

If you are told that a current or former worker has an occupational disease or that a claim for an occupational disease has been filed with the WSIB, you must provide written notification to an MOL director, the joint health and safety committee or health and safety representative and the union, if there is one, within four days.

How the WSIB makes decisions on occupational disease claims

O. Reg. 175/98 includes Schedules 3 and 4 which list the specific diseases for which there is a presumption of entitlement. The WSIB also has policy guidelines for several specific diseases including asbestosis, noise-induced hearing loss, tinnitus, occupational aluminum exposure, dementia, Alzheimer's disease and other neurologic effects, tuberculosis, scleroderma, and post-exposure prophylaxis for occupational exposure to HIV. Occupational disease claims that are not covered by the schedules or the policies are adjudicated on the merits and justice of the case.

Occupational disease claims are complex and have special rules. Contact the OEA for assistance if you have such a claim

What an injured worker could get paid, if the claim is allowed

Workers with injury/disease dates after January 1, 1998 who are absent from work because of their work-related injury/disease will receive LOE benefits equivalent to 85% of their pre-injury net average earnings (NAE). Workers with injury/disease dates prior

to January 1, 1998 receive 90% of their NAE. LOE benefits may include both a short-term and a long-term benefit rate depending on how long the worker is off work.

The worker's LOE benefits can be adjusted any time prior to the final 72-month benefit review as a result of any material change in circumstances, or for a failure to report any material change that takes place after January 1, 1998.

a) Short-term benefit rate

Short-term average earnings include the worker's earnings from the injury employer and all other employment ("concurrent employment") at the time the worker was injured. Short-term average earnings are used to pay LOE benefits for the first 12 weeks after the injury. Some of the types of earnings included in the calculation of regular short-term earnings are

- the base rate of pay with the injury employer (hourly, daily or weekly)
- gratuities and tips included as gross earnings for income tax
- shift differentials
- vacation pay that is calculated as a percentage of the base rate and paid regularly on pay checks
- mandatory overtime
- regular voluntary overtime
- regular production bonuses and commissions, and
- room and board if they are part of the worker's pay.

b) Long-term benefit rate

The long-term rate is paid from the start of the 13th week following the injury and is based on the worker's earnings pattern generally 12 months prior to the accident date or less if there was a break in the worker's employment pattern.

OPM Doc. No. 18-02-02, "Determining Short-term Average Earnings," includes a table outlining the types of earnings that are included in the short-term and long-term earnings basis calculation.

Other groups of workers to which different rules apply

There is a separate WSIB policy that outlines the procedure for calculating short- and long-term average earnings for dependent contractors, workers who have optional insurance, apprentices, learners, students, pupils enrolled in a Ministry of Education program, members of a volunteer force, emergency workers, and individuals participating in the Ontario Works program.

Ensure the worker is receiving the appropriate amount of LOE benefits

Since the WSIB assumes the worker's short-term and long-term average earnings are the same, it usually does not automatically recalculate average earnings. You may

need to ask the Case Manager for a recalculation if the short-term average earnings do not reflect the long-term average earnings.

Either the employer or the worker can request a recalculation of LOE benefits. If a recalculation results in a lower rate, a benefit-related debt is created and the worker may have to pay that amount back to the WSIB.

All benefits are subject to the worker's cooperation. You should contact the decision-maker if you have reason to believe the worker is not fulfilling his/her obligation to cooperate in the WR process.

When LOE benefits are discontinued

LOE payments continue until the earliest of one of the following situations occurs:

- the worker no longer suffers a wage loss as a result of the injury, or
- the worker is no longer impaired as a result of the injury, or
- the worker turns age 65, provided the worker was less than 63 years of age at the time of the injury, or
- two years after the date of the injury, if the worker was 63 years old or older on the date of the injury.

NEL benefits

The worker may also be entitled to a NEL benefit if the work-related injury/disease results in a permanent impairment. The WSIB defines a "permanent impairment" as any permanent physical or functional abnormality or loss resulting from a work-related injury/disease, as well as any psychological damage arising from that abnormality or loss. Schedule 1 employers can apply for SIEF relief if the worker had a prior injury or pre-existing condition that contributed to the worker's permanent impairment.

Injury costs covered by the WSIB

Once a claim is accepted the WSIB provides the following benefits:

- LOE
- health care
- health care equipment and supplies
- NEL benefits
- work transition (WT) services for workers or surviving spouses to assist in WR
- loss of retirement income (LRI)
- future economic loss (FEL) benefits for injuries occurring between 1990 and 1997
- costs covered under the occupational disease and survivor benefit program
- benefits for seriously injured workers, and
- compensation for the worker's survivors.

How the WSIB decides whether a worker is entitled to LOE payments and other services

The WSIB decides if the claim is work-related. In order for a claim to be considered work-related, all of the following conditions must exist:

- the employer's business activity is covered under the WSIA
- the worker is covered under the WSIA
- there is a personal work-related injury
- there is proof of accident, and
- the medical diagnosis is compatible with the accident or disablement history.

Following an injury, the WSIB weighs the evidence and makes a decision based on the merits of the particular claim, ensuring that its decision is consistent with the provisions of the WSIA and WSIB policies. In cases where evidence is approximately equal on both sides of an issue, the WSIB will decide in favour of the worker (or spouse or dependant) who is making the claim. This provision is known as the "benefit of doubt."

Work Reintegration

The focus of WR

The WSIB's WR program integrates return to work, re-employment, and labour market re-entry (LMR). The "WR goal" is for the WPPs to return the worker to work that he/she has the skills to perform, that is consistent with his/her functional abilities and that, to the extent possible, restores his/her pre-injury earnings, ideally returning to the pre-injury job. WR activities begin when the worker is able to return to suitable or pre-injury work with the injury employer. Your WR obligation continues as long as the worker remains disabled and remains in your employ.

The WPPs' cooperation obligations

Employers and workers are required to

- contact each other as soon as possible after the injury occurs and maintain communication throughout the period of the worker's recovery and impairment
- attempt to identify and provide suitable employment (see below) that is safe, productive, and consistent with the worker's functional abilities and that, where possible, restores the worker's pre-injury earnings,
- notify the WSIB if there is a dispute,
- give the WSIB any information it may request concerning the worker's WR, and
- inform the WSIB if any dispute or disagreement about the worker's WR arises.

To try to ensure good communication from the outset, employers should provide injured workers with an information package that includes the name(s) and telephone

number(s) of the individual(s) to be contacted during business hours, on the employer's behalf. All voicemail messages left by the injured worker on the employer's telephone should be recorded (including the date, time, and the content of the message) as part of the documentation process.

Duration of the WPPs' cooperation obligations when the employer has no re-employment obligation

These cooperation obligations apply to the WPPs from the date of injury/disease until the earliest of

- the date the worker's LOE benefits are locked in (usually 72 months after the date of injury), or
- the date an employment relationship no longer exists between the WPPs because either
    - the worker voluntarily quits, or
    - the employer terminates the worker's employment for reasons that are *not* related to the worker's work-related injury/disease and related absences from work, or treatment for the work-related injury/disease, or the claim for WSIB benefits, in *any* way.

The WPPs' cooperation obligations also end when the WSIB is satisfied that the injury employer currently has no suitable work, and is not expected to have any suitable work in the reasonably foreseeable future.

You should call the OEA or your legal advisor for advice if any of the following situations arise:

- you are thinking about terminating or laying off an injured worker, or
- you don't want to provide accommodation for the injured worker, or
- an injured worker has resigned, or
- an injured worker has left the workplace without an explanation, or
- an injured worker has entered the WT phase of the WR process.

"Suitable" work

"Work" may include the combining of tasks or duties which together may constitute temporary work, or a short-term training program that results in a job with the injury employer. Post-injury work, including the worker's pre-injury job, is considered "suitable" if it is work that

- is safe, i.e., it does not present a health or safety risk to the worker, to his/her coworkers, and/or to third parties, it is performed at a worksite that is covered by either the OHSA or the Canada Labour Code, and the worker is functionally able to commute to and from the worksite safely
- is productive, i.e., it provides an objective benefit to the employer's business

- the worker is medically able to perform, according to his/her physical and/or cognitive functional abilities, and
- restores the worker's pre-injury earnings, if possible.

Some of the things you need to think about when trying to identify suitable employment include

- functional abilities information
- modified duties
- possible modifications to the workplace
- alternative duties
- where the worker lives, and
- your human rights obligations.

It is important to speak with the injured worker when preparing an offer of suitable work to match the worker's functional abilities to duties that are available in your workplace. You should document all of the options you have considered. If, after having considered all of the options, you are unable to offer the worker suitable work, you must notify the WSIB decision-maker immediately.

Suitable Occupation (SO)

If an employer is unable or unwilling to offer suitable work to a worker who is unable to perform his/her pre-injury job because of the work-related injury/disease, the WSIB will consider training the worker to do a SO.

The SO that is identified for the worker represents a category of jobs suited to the worker's transferable skills that is safe, productive, consistent with his/her functional abilities and, where possible, restores his/her pre-injury earnings. The SO must also be available either with the injury employer or in the labour market.

a) "Available" work with the injury employer

Work with the injury employer is "available" if it *exists* at the pre-injury worksite, or at a comparable worksite of the injury employer. In determining whether suitable work is "available" as it relates to the injury employer, the WSIB will look at whether a job vacancy has been posted, advertised or otherwise communicated, or at evidence of hirings or transfers taking place on or after the date the injured worker is able to do suitable work.

In a unionized workplace, the WSIB will respect the terms of the collective agreement whenever possible, but may require the WPPs to consider modifying the operation of specific provisions of the collective agreement in order to meet their WR obligations. If the worker has a permanent impairment, or is likely to have a permanent impairment, and his/her condition is stable but the worker is unable to return to his/her pre-injury job, the WPPs and the WSIB will look at whether it is reasonable to believe the job will be available on a long-term basis.

b) "Available" work in the labour market

Post-injury work in the labour market is considered "available" if employment exists and is in demand in the labour market, to the extent that the injured worker has a realistic chance of getting a job.

WR services for occupational diseases, disablements and recurrences

If lost time is incurred long after the injury/disease, WR activities will begin as soon as the worker is functionally fit to return to work and all WR services will continue to be provided, where possible. If the worker has a new employer at that point, the WSIB will encourage the new employer to provide accommodated work since it is unlikely a cooperation or re-employment obligation would continue to apply to the injury employer.

What to expect if you are unable to arrange suitable and available work

If the WPPs are unsuccessful in arranging suitable and available work for the injured worker, the WSIB will meet with the WPPs at the worksite within 12 weeks after the date of injury. The WSIB will also ensure the injured worker is receiving appropriate medical care through Regional Evaluation Centres and Specialty Clinics, and provide dispute resolution services when it is notified of a dispute.

There is a heavy emphasis on human rights obligations. Employers have an obligation to offer suitable and available work to the injured worker. If there is no available work, employers must show they considered accommodating the worker up to the point of undue hardship. You should document *all* discussions with the injured worker and/or the WSIB, immediately after they take place, so you have an accurate and complete record of your WR activities.

How to bring an injured worker back to work

Be proactive and establish a return to work program *before* injuries occur. You should

- determine your needs according to the size of your company, the nature of your business and the number of claims you handle
- set clear expectations and procedures
- ensure commitment by all parties (senior management, workers, supervisors, claims personnel and union representatives)
- inform all employees of your return to work program
- ensure all workers understand their duty to cooperate in return to work as outlined in the legislation, and their role in the WR process
- get feedback on your return to work program by surveying workers, supervisors and union representatives, and
- evaluate the success of your program.

Maintain contact with the injured worker in order to

- ensure the injured worker knows about your return to work program and his/her legislated duty to cooperate
- reassure the worker and find out how he/she is recovering
- determine whether the worker is capable of returning to regular or modified work
- receive the worker's help in identifying opportunities for WR, and
- ensure the worker continues to remain part of the workplace by inviting the worker to staff meetings and social functions, and keeping the worker up-to-date on changes and activities in the workplace.

If the worker is capable of returning to modified work, develop and offer a return to work plan using information from the worker's FA form. The offer should be in writing and should include

- a description of the job
- the physical demands of the job
- the start date and completion date of the plan
- the hours of work required for the job, and
- the wages payable for the job.

Send a copy of the offer to the WSIB. Contact the WSIB regularly (every one to two weeks) to update the WSIB on your return to work / WR efforts, and to ensure you are kept up-to-date on the worker's claim.

What to do if the worker says the post-injury job you offered is not suitable

If the worker rejects the post-injury job you have offered, he/she must let you know that the offered job is not suitable, and provide *reasons* for this position, i.e., because the objects to be lifted are too heavy, the tasks are painful, etc. You must consider the reasons given and, through dialogue with the worker, consider further accommodations where appropriate. If the WPPs cannot reach an agreement, *both* WPPs need to notify the WSIB as soon as possible, and provide the WSIB with all of the information that is relevant to the dispute, i.e., job descriptions, physical demands analyses, and/or functional abilities information.

The WSIB Return to Work Specialist (RTWS) will meet with the WPPs at the worksite within 12 weeks after the date of injury. The WSIB will also ensure the injured worker is receiving appropriate medical care through Regional Evaluation Centres and Specialty Clinics, and provide dispute resolution services when it is notified of a dispute.

If the WSIB determines that the job you have offered the worker is *not* suitable, the worker will receive full LOE benefits while he/she continues to cooperate with the employer and the WSIB in the WR process.

If, however, the WSIB believes that the job you have offered the worker *is* suitable, the WSIB will determine that the worker is able to earn the wages associated with the

offered job. The WSIB will verbally inform both parties of this decision, adjust the worker's LOE benefits, and confirm its decision in writing to both parties. The worker's LOE is adjusted, usually as of the date of his/her next available shift, by deducting the earnings associated with the suitable work from the pre-injury earnings, regardless of whether the worker has accepted the job offer or not.

It is important to note that a dispute over job suitability does not mean the WPPs are not being cooperative in the WR process. Workers who raise a health and safety concern under the OHSA or the Canada Labour Code are also not considered to be in breach of their obligation to cooperate in WR.

What to do when the injured worker is back at work

Remember that you want to encourage and help the injured worker to recover from the injury and to return to the pre-injury job as quickly as possible upon returning to work. You should consider meeting with the worker on the job. Ask the worker how he/she is handling the current job duties, and document all of the worker's comments and concerns.

When necessary, modify the work and/or the workplace to provide work that is consistent with the worker's functional abilities, and that respects applicable human rights legislation, i.e., reduced hours, reduced productivity requirements, assistive devices, etc. You have a duty to accommodate workers up to the point of undue hardship in the WR process under the WSIA and/or the Ontario *Human Rights Code*. Good communication and cooperation between the WPPs is essential. Adjust your return to work plan as needed. Return the worker to the pre-injury job if he/she is ready to return to regular duties sooner than expected. If the worker finds the work too challenging, you may need to remove certain duties or prolong the duration of the modified job. Establish new target dates if the change in job duties is extended.

Complete an "Employer's Subsequent Statement" Form 0009C to let the WSIB know the worker has returned to work. Update the WSIB about the worker's progress on a regular basis, including a change in hours, a change in pay, and a return to his/her regular job.

How the WSIB determines non-cooperation

The WSIB will review the pattern of actions and behaviours of the WPP, and consider all relevant facts and circumstances including the degree to which the WPP has initiated and/or participated in the WR process. The WSIB will need to be convinced, on a balance of probabilities, that the WPP knew of his/her/its obligation, had the ability to carry that obligation out, and failed to do so, in order for a non-cooperation penalty to be applied.

Before it considers applying a penalty against the injury employer for failing to offer suitable work, the WSIB needs to determine that suitable work is available.

When workers will *not* be found in breach of their obligation to cooperate

"Compelling circumstances" that are beyond a worker's control, i.e., a strike or lockout, a death in the family, or an unexpected illness or injury may be considered a valid reason for a worker being unable to cooperate in WR. At the same time, however, his/her LOE benefits may be reduced if the employer has offered suitable and available work, and the worker's loss of earnings is no longer fully attributable to the work-related injury/disease.

When employers will *not* be found in breach of their obligation to cooperate

"Compelling circumstances" that are beyond an employer's control, i.e., a summer holiday or shutdown, a general layoff, a strike or lockout, and/or a corporate reorganization may be considered a valid reason for an employer being unable to cooperate in WR. For small employers, compelling circumstances may also include a death in the family or an unexpected illness or injury.

Advanced notice in a potential non-compliance situation

Prior to making a finding of non-cooperation or re-employment breach, the WSIB will provide the WPP with a warning about a possible penalty – orally, where possible, and in writing. Prior to imposing a penalty, the WSIB issues a notice informing the WPP of the finding of non-cooperation or re-employment breach, and the WSIB's expectations for compliance. For both workers and employers, the written notice for non-cooperation penalties comes into effect seven WSIB business days after the date of the written notice. The one exception to this rule is that for small employers with fewer than 20 workers, non-cooperation penalties come into effect 14 WSIB business days after the date of the written notice.

What to do if the worker is not cooperating

If you do not believe the worker is fulfilling his/her obligation to cooperate in the WR process, you must contact the WSIB Case Manager as soon as possible. The Case Manager may send a RTWS to the workplace to help the employer and worker come to a resolution.

WR non-cooperation penalties for workers

If the worker has breached his/her obligation to cooperate in the WR process, the WSIB applies an initial partial penalty that reduces the worker's LOE by 50% from the date the written notice comes into effect. This penalty stays in effect until the 14th calendar day following that date, or until the worker starts cooperating again, whichever is earlier.

If non-cooperation continues beyond the 14th calendar day after the date the written notice comes into effect, the WSIB applies a full penalty and stops the worker's LOE benefits.

WR non-cooperation penalties for employers

a) Initial penalty

For employers, the WSIB will levy an "initial penalty" of 50% of the cost of the worker's LOE benefits from the date the written notice comes into effect (seven WSIB business days after the date of the WSIB's written notice) until the 14th calendar day following that date, or until the employer starts cooperating again, whichever is earlier.

b) Full penalty

If the employer's non-cooperation continues beyond the 14th calendar day after the written notice comes into effect, the WSIB will levy a "full penalty" which is equal to 100% of the cost of the worker's LOE, *plus* 100% of any costs associated with providing WT services to the worker.

The full penalty will continue to apply until the earliest of

- the day after the day the WSIB is satisfied the employer has started cooperating again
- the date no further LOE benefits are payable and no WT services are provided, or
- 12 months after the date the written notice came into effect.

Re-employment obligations and potential penalties continue to apply to employers, as well.

Re-employment for Non-construction Employers

Employer re-employment obligations

You have an obligation to re-employ your injured worker when all of the following conditions are met:

- you regularly employ 20 or more workers
- the worker worked for you continuously for at least one year before the date of injury, and
- the worker is unable to work as a result of the work-related injury/disease.

a) How the WSIB defines "20 or more workers"

The number of workers employed by the injury employer on the date of injury is generally considered the number of workers regularly employed. For Schedule 1 employers, only the workers for whom earnings must be reported to the WSIB for the purpose of calculating premiums are included. For Schedule 2 employers, the total

number of workers employed in Ontario on the date of injury is considered the number of workers regularly employed.

b) How the WSIB defines "continuous employment"

Workers who were hired at least one year prior to the date of injury are considered to be continuously employed unless the year was interrupted by a work cessation that was *intended* by either the worker or employer to break the employment relationship. For seasonal workers, the WSIB will look at the employer's past hiring practices to determine whether the employer intended to continuously employ the seasonal worker.

c) How the WSIB defines "unable to work"

The worker is considered "unable to work" if, because of the work-related injury/disease, he/she

- is absent from work, *or*
- works less than regular hours, *and/or*
- requires accommodated work that pays, or normally pays, less than his/her regular pay, regardless of whether you reimburse the worker for an actual loss of earnings or not.

Lost time and/or earnings due to health care appointments are excluded from this definition.

When your re-employment obligation begins

The re-employment obligation starts when the employer receives notice that the worker is medically able to perform either the essential duties of his/her pre-injury job or suitable work. Notice may be provided to the employer by the worker, the worker's treating health care professional, and/or the WSIB. Notice of fitness to return to work includes use of the WSIB's FA form, or personal notice by telephone or by fax, and is effective on the date it is received by the employer. Notice provided by regular mail is effective seven calendar days from the date the notice was sent.

Situations you may experience in re-employing a worker

When the worker is able to perform the essential duties of the pre-injury job, your obligation is to offer the worker either the pre-injury job or a comparable job. The "essential duties" of the pre-injury job are all of the duties necessary to produce, at the normal level of productivity, the final product or service required. A "comparable" job would be similar in nature and have the same earnings as the worker's pre-injury job.

When the worker is medically able to perform suitable work, as defined above, your obligation is to offer the worker the first opportunity to accept suitable work when it becomes available.

If you offer the worker suitable employment and another suitable job that is more comparable in nature and earnings to the worker's pre-injury job becomes available, you must offer the more comparable job to the worker because the requirement to offer suitable employment is ongoing during the period of the re-employment obligation.

Duration of your re-employment obligation

Your obligation lasts until the earliest of

- two years after the date of the injury
- one year after you receive notice from the WSIB that the worker is medically able to return to the essential duties of the pre-injury job, or
- the worker turns 65.

Accommodating the worker up to the point of undue hardship

The employer's duty to accommodate the work and/or the workplace incorporates "undue hardship" principles from the Ontario *Human Rights Code* and the *Canadian Human Rights Act*. Section 41(6) of the WSIA states that, "The employer shall accommodate the work or the workplace for the worker to the extent that the accommodation does not cause the employer undue hardship."

Demonstrating "undue hardship"

The WSIB refers to the Ontario Human Rights Commission's (OHRC) "Policy and guidelines on disability and the duty to accommodate," which are available on the OHRC's website at www.ohrc.on.ca. The WSIB considers the cost, any outside sources of funding, and any health and safety requirements when determining whether accommodating a worker would cause undue hardship to the employer.

Costs will meet the threshold of undue hardship if they are quantifiable, if you can prove they are related to the accommodation, if they are so substantial that they would alter the essential nature of the business, or if they are so high that they would substantially affect the financial viability of the business. The WSIB may consider providing assistance with the costs of accommodation if the accommodation provides a long-term solution to the worker's impairment, *and* if the accommodation would otherwise result in undue hardship.

Terminating the injured worker *within* six months of re-employment

If you terminate an injured worker within six months of re-employing him/her, the WSIB will presume you breached your re-employment obligation and impose a re-employment penalty.

Workers who are terminated within six months of being re-employed have three months to ask the WSIB to investigate the potential breach. The WSIB is not required to

investigate such complaints after the three-month period, but they may choose to do so, and also may take the initiative to investigate at any time.

The employer can rebut the presumption by proving, on a balance of probabilities, that the termination was not related to the injury. The employer (or worker) has 30 days to object to a re-employment decision.

Terminating the injured worker *before* re-employment, or more than six months *after* re-employment

If you terminate the injured worker either before he/she is re-employed, or more than six months after he/she is re-employed, but within the obligation period, a re-employment breach is not *presumed*. The WSIB will, however, look at the circumstances surrounding the termination and decide whether the termination was related to the workplace injury/disease in *any* way. You may still be found in breach of your obligation if the facts support it. Before terminating or laying off an injured worker, call the OEA for advice.

Re-employing fixed-term contract workers

Generally, the employer of a fixed-term contract worker is only required to re-employ the worker in the pre-injury job, comparable work, or suitable work for the remainder of the fixed-term employment contract that was interrupted by the work-related injury/disease. If the employer has routinely extended or renewed the worker's fixed-term contract in the past, however, with no break in employment, the WSIB may decide that the employer's re-employment obligations extend beyond the end of the fixed-term employment contract, for the duration of the re-employment obligation period, under the WSIA.

Re-employment penalty

If you are found in breach of your re-employment obligation, the WSIB will levy a re-employment penalty against the employer that is equal to up to one year of the worker's NAE for the year before the injury, even if it exceeds the WSIB's maximum insurable earnings ceiling of $79,600 in 2011.

The penalty will be applied seven WSIB business days after the date that appears on the notice letter from the WSIB, and is apportioned based on the length of the remaining obligation period at the time the breach takes place. The penalty may be reduced by 50% if the employer subsequently offers suitable work at no wage loss, or by 25% if the employer offers suitable work at a wage loss, as long as employment continues for the remainder of the obligation period.

Re-employment payments or LOE benefits paid to the worker

If the employer does not re-employ a worker who is able to do the essential duties of the pre-injury job without accommodation, the worker will receive **re-employment**

payments from the WSIB, retroactive to the date the re-employment obligation was breached, plus interest. These payments continue until the earlier of one year, or the end of the re-employment obligation, as long as the worker has not found employment elsewhere and is available for and cooperating in appropriate WR services.

If the employer does not re-employ a worker who is only able to perform the essential duties of the pre-injury job with accommodation, or only able to perform suitable work, the worker will receive **LOE benefits** from the WSIB, retroactive to the date the re-employment obligation was breached, plus interest. If the employer does not offer the worker any work, the worker will receive full LOE benefits if he/she has not found employment elsewhere and is available for and cooperating in health care and appropriate WR services, even if the services extend beyond the date the re-employment obligation ends.

Breaching cooperation and re-employment obligations

If an employer breaches both a cooperation *and* a re-employment obligation during *overlapping periods* in the same claim, the WSIB will apply a single penalty – whichever one is higher. But if an employer breaches more than one cooperation or re-employment obligation at *different periods* in the same claim, the WSIB may apply more than one penalty.

When the worker voluntarily quits

If a re-employment obligation exists but the worker voluntarily quits his/her job, no further re-employment obligation would generally apply. You should call the OEA or your legal advisor for advice if you have an injured worker who subsequently resigns, leaves the workplace without providing an explanation, or enters the WT phase of the WR process.

Different rules apply to unionized and non-unionized workers

In unionized environments, the collective agreement prevails over an employer's re-employment obligations under the WSIA if the collective agreement affords the worker greater re-employment protection. The WSIA also acknowledges the seniority provision of collective agreements.

Work Transition

When you can't bring the injured worker back to work

WT services, including assessments and plans, are provided to help the WPPs find suitable and available work with the injury employer, or to help a worker re-enter the labour market in a SO.

WT assessments

An injured worker will be provided with a WT assessment if

- the worker has, or likely has, a permanent impairment
- the worker is not capable of performing the pre-injury job,
- the employer is unable to provide suitable and available work, or
- the employer has identified a job, but it is unclear if the work is suitable.

A WT assessment includes testing to determine if the worker has the skills, abilities and knowledge to either return to work with the injury employer, or to re-enter the labour market in a SO. It is usually provided between six and nine months following the date of injury but, if that is not possible, it will be done as soon as the worker is able to return to suitable work. Although workers usually receive only one assessment, the WSIB may decide a WT re-assessment is appropriate if, for example, the work-related impairment significantly changes.

How the WSIB determines a SO

In the process of determining a SO for a worker, the WSIB will try to maintain the employment relationship between the worker and the injury employer by identifying appropriate occupations with the injury employer, providing the worker with input and choice, and re-integrating the worker into suitable and available work at a reasonable cost.

The WSIB works with the WPPs and takes the following information into consideration:

- the worker's functional abilities
- the worker's employment-related aptitudes, abilities, and interests
- the kinds of jobs that are available with the injury employer through direct placement, accommodation or retraining
- labour market trends, and the likelihood of the worker being able to secure and maintain work within the SO with a new employer, and
- any pre-existing, non-work-related condition(s) the worker may have, in addition to any other human rights-related accommodation requirements.

The worker and his/her representative have the opportunity to discuss the results of the assessment findings with the assessor. The WSIB, the worker and the employer (if participating in the process) will receive copies of WT assessment documentation.

Part-time employment before the injury

If the worker was working only part-time hours before the work-related injury/disease, he/she is not expected to significantly increase the number of hours or to secure full-time employment post-injury in the SO. A part-time worker who would like to obtain full-time employment post-injury, however, may be provided with assistance to do so.

Part-time employment after the injury

If the worker worked full-time hours prior to the work-related injury/disease, but is unable to return to full-time hours because of the work-related injury/disease, he/she may receive a SO with part-time hours.

"Availability" of the SO

In the process of identifying available work, the WSIB will look

- first, to a SO with the injury employer in the local labour market, or in the surrounding area with a reasonable commute for the worker
- then, to a SO with a new employer in the local labour market, and
- finally, to a SO with a new employer in the broader labour market.

Relocation services

Relocation services are offered to the worker when

- the worker must change jobs because of permanent work-related restrictions, and
- the injury employer has no SO in the local labour market, and
- the injury employer has no SO in the surrounding area within a reasonable commuting distance for the worker, and
- there are no SOs in the local labour market with a new employer, and
- the broader labour market offers greater employment prospects in the SO.

The WSIB pays for "appropriate expenses" that are directly related to the worker *looking for work* in the broader labour market. After receiving a *bona fide job offer* in the broader labour market, the WSIB pays for additional "appropriate expenses" associated with that relocation. If the worker decides *not* to relocate, and there is no SO in the local labour market, WT services end and the worker's LOE benefits are adjusted to reflect the earnings of the established SO in the broader labour market.

WT plans

A WT plan outlines the kind of specialized assistance or formal training the worker needs to enable him/her to either return to work with the injury employer or, if necessary, in a SO that is available in the labour market. The WSIB develops the WT plan in collaboration with the worker, the injury employer (where appropriate), union representatives, other authorized representatives, and the treating health care professional where necessary. WT plans may be revised to accommodate a significant change in circumstances related to the worker, the work-related impairment, or the labour market. The WSIB may also revise the original SO, if necessary.

On-the-job training versus formal education programs

A training on the job (TOJ) program provides the worker with hands-on training at an employer's worksite, where he/she will learn and acquire new skills that are specific to the SO, over a four- to 26-week period. The WSIB arranges the TOJ and a training plan for the worker that includes measurable goals. The intent of this program is for the training period to lead directly to suitable and long-term work. This program is well suited to workers who are experiential learners who do not require a formal education program to facilitate a return to work in the identified SO.

Options for workers who are 55 years of age or older

If a worker is 55 years of age or older at the time the WSIB determines he/she is entitled to LOE benefits, and the worker requires a WT plan involving vocational skills training to obtain employment in a SO, he/she can choose to either participate in a WT plan to return to work in the SO, or to participate in a 12-month Transition Plan (TP) that is focused on self-directed WR in order to return to work in the SO.

If the worker chooses the self-directed TP option, an irrevocable no-review option for LOE benefits payable to age 65 also applies. Full LOE benefits would continue for the 12-months the worker is participating in the self-directed TP. After that, LOE benefits would be recalculated to reflect the estimated earnings of the SO according to current labour market information.

Stay actively involved in the WT process

You should take an active role in ensuring the WSIB's WT plan is realistic and appropriate, and monitor the WT plan costs to ensure they are reasonable. Remind the Case Manager that you want to be consulted throughout the WT process.

What to do if you disagree with the WT plan

You have 30 days from the date of the plan to notify the Case Manager, in writing, of your disagreement. Where either or both of the WPPs object to the WT plan, an "expedited" appeals process is offered. The WSIB attempts to reconsider the issue at the first level of decision-making. If an objection to the WT plan is first received by the Appeals Branch, however, the file will be assigned to an Appeals Resolution Officer (ARO) who will review the case on a priority basis, and contact the WPPs within 10 business days to determine how best to proceed with the appeal.

When the worker does not cooperate in the WT process

If the worker's non-cooperation in WT activities continues past the 14th calendar day after the date the written notice comes into effect, the WSIB terminates the WT assessment and/or plan and reduces the worker's LOE benefits to reflect the earnings he/she would have been able to earn if he/she had completed the WT plan.

Appeals

Appealing a WSIB decision

Most WSIB decisions can be appealed if you believe they are incorrect, or are contrary to the WSIA or WSIB policy.

Different levels of appeal

There are three levels of appeal.

1. WSIB Operating Level

Operating level decisions are made by Primary Adjudicators, Eligibility Adjudicators, Short Term Case Managers, Long Term Case Managers, SIEF Case Managers, Nurse Consultants, Account Specialists, Account Analysts, Work Transition Specialists (WTSs), and others. You may file an objection if you disagree with a decision. If the decision is not changed, you may file a formal appeal with the WSIB's Appeals Branch.

2. WSIB Appeals Branch

The objection is referred from the operating level to the Appeals Branch and is assigned to an ARO who makes a decision on the appeal. If you disagree with the ARO's decision, you may file an appeal with the WSIAT.

3. Workplace Safety and Insurance Appeals Tribunal (WSIAT)

The final level of appeal is conducted by the WSIAT, which is independent of the WSIB.

The OEA may be able to represent you at any or all levels of appeal.

Time limits for appealing a WSIB decision

There are strict time limits for appealing all WSIB decisions. You have 30 days from the decision date to appeal WR, re-employment or WT decisions, and six months from the decision date to appeal any other decision to an ARO.

Although the WSIB's appeal guidelines generally allow an appeal to be filed within one year of the decision, employers should continue their best efforts to file an appeal within the stated time limits. If the appeal period is missed, file your appeal as soon as possible. Employers who encounter problems with appeal periods should contact the OEA for assistance. The WSIB's "Appeals System Practice & Procedures" document is on the WSIB's website.

ARO decisions must be appealed within six months of the decision date to the WSIAT.

How to appeal a WSIB decision

Write to the operating level decision-maker to object, and include any new information to support your objection. The decision-maker will review the concerns raised and may reconsider his/her decision.

If the decision is unchanged, a copy of the claim file will be sent to you, along with an Objection Form that must be completed and returned to the WSIB to proceed with the objection. The worker's claim file will be provided in two sections – health care and non-health care.

Appeals at the WSIB's Appeals Branch

There are two different methods used to resolve appeals at the Appeals Branch, depending on the complexity of the issue(s) in dispute.

1. 60-day decision option

This method is used when the issue is relatively straightforward. The objecting party or his/her representative may choose to have a decision made within 60 days based on the information on file and any additional information that is provided in writing by the parties. The onus is on the objecting party to gather any relevant new information.

2. Review/enquiry/hearing option

If the 60-day decision option is declined, the ARO will contact both parties to confirm the issues and determine the most appropriate way in which to resolve the appeal.

If the parties agree the issue(s) can be resolved through written submissions, the parties are given 21 days to make their submissions. After the ARO has received the parties' submissions, the case proceeds to the Resolution Stage for a final decision.

However, if one or both parties decide they would like to provide further evidence, the case proceeds from the Review Stage to the Enquiry Stage. The case moves to the Resolution Stage for a final decision after the ARO receives the additional evidence and submissions.

What happens if a worker appeals a WSIB decision

If a worker appeals a WSIB decision, the WSIB will send you a Participant Form that must be completed and returned to the WSIB if you wish to participate in the appeal process. If you have any concerns regarding the appeal you should either note them on the Participant Form or attach a letter. If you do not return the form to the WSIB, you will not be contacted again until after the final decision has been made.

Getting help to appeal a decision

The OEA provides representation at both the WSIB and the WSIAT, primarily to employers who have fewer than 100 employees.

Employers of all sizes can call the OEA's Advice Centre any time to discuss concerns they have with one or more workplace safety and insurance issues. Many employers appreciate having an experienced person to talk to about concerns they have regarding a particular revenue issue or claim file. This includes thoughts about the possibility of appealing one or more decisions, and approaches the employer may wish to take when presenting its position in the appeal process.

WSIB Service Delivery Model

The overall goal

The WSIB's Service Delivery Model aims to reduce the length of time a worker is off work due to a work-related injury/disease. The WSIB uses a case management approach based on discussions with the WPPs. WSIB decision-makers are expected to provide decision letters in all cases to the WPPs that explain their reasoning. The decision-maker's Manager is the employer's point of contact if issues cannot be resolved with frontline staff.

Registration Clerks

Forms 6, 7 and 8 are received by the Central Claims Processing department. Registration Clerks set up the claims. If a Form 8 is received prior to a Form 7, the Registration Clerk will call the employer with the claim number and ask if he/she is aware of the accident. Always include the claim number on all documents you send to the WSIB, if you know what it is.

Primary Adjudicators

Primary Adjudicators determine eligibility on claims that meet the WSIB's five-point check system (there is a worker, an employer, proof of accident, personal injury and compatibility) and are likely to be allowed. This covers approximately 70-80% of all claims registered with the WSIB, most of which are no-lost-time claims.

Eligibility Adjudicators

Eligibility Adjudicators make initial entitlement decisions on more complex claims. Claims are also referred from Primary Adjudicators to Eligibility Adjudicators in cases where the Form 7 is received before the Form 8.

Initial entitlement decisions that are made based on the information available at the time remain the responsibility of the Eligibility Adjudicator. This includes all decisions

rendered by a Primary Adjudicator. Eligibility Adjudicators have access to a Nurse Consultant who can obtain outstanding information in a claim file to help with the decision-making process. Investigators are not staffed in the WSIB's regional offices, but there are some investigators at the WSIB's Head Office in Toronto. If need be, an investigator can be sent out to do an investigation elsewhere in the province.

If the Form 7 says modified work is available and the claim is allowed, the claim is transferred to a Short Term Case Manager to address the WR issues. No-lost-time claims where the worker is doing modified work are also referred to the Short Term Case Manager so the recovery process and return to pre-injury work can be monitored.

Employers who have concerns with respect to specific cases should contact the appropriate Eligibility Manager.

Case Managers

1. Short Term Case Manager

All cases are transferred from the Eligibility Adjudicator to the Short Term Case Manager *no later than 30 days* after the claim has been registered at the WSIB. Cases may be referred to a Short Term Case Manager as early as the first day of the claim if it is recognized that help is needed to manage the WR issues, although ownership of the case will remain with the Eligibility Adjudicator.

The Short Term Case Manager makes decisions on entitlement for recurrences that occur *less than three months* after the worker's WSIB benefits have ceased. He/she is responsible for determining ongoing benefits and for making decisions on entitlement based on new information.

In all cases, the Case Manager will discuss WR opportunities with the employer and worker to see if suitable work options can be identified, including accommodation of the pre-injury job. If the worker is capable of returning to work in some capacity, and

- the Case Manager has been unable to remove any obstacles, or
- there is uncertainty about work availability or suitability with the accident employer, or
- the employer is unable/unwilling to provide suitable work,

the Case Manager will refer the claim to a RTWS who will meet with the worker and employer on the employer's premises to facilitate the WR process.

2. Long Term Case Manager

All cases are transferred from the Short Term Case Manager to the Long Term Case Manager *no later than* 180 days after the claim has been registered with the WSIB. Only the Long Term Case Manager can make decisions regarding WT. Long Term

Case Managers also determine whether the worker has experienced a permanent impairment and needs to be referred for a NEL assessment.

Nurse Consultants

WSIB Nurse Consultants make decisions on health care entitlement, resolve objections to health care entitlement decisions, and intervene in WR obstacles.

Medical Consultants

WSIB physicians are engaged in the WR process by contacting the injured worker's doctor and clarifying perceived WR obstacles as the WPPs work towards a resolution. They do not provide a medical opinion to WSIB decision-makers for decision-making purposes.

Return to Work Specialists

The RTWS acts as a facilitator. He/she does not conduct formal mediations. Discussions with the WPPs are not confidential and can be recorded in the claim file. Employers are entitled to have a representative attend these meetings with them. Employers may wish to contact the OEA for advice and possible assistance in such cases.

During collaborative WR discussions with the WPPs, the RTWS may determine that additional services are needed in order to better understand the worker's vocational potential, and/or that retraining may be required before the worker can return to suitable work with the accident employer. At that point, the RTWS will close off his/her services, and advise the Case Manager that a referral to a WTS is required.

Case Management Re-employment Team

This Specialty Team continues to facilitate employer cooperation and re-employment, and makes all re-employment decisions while the Short Term Case Manager or Long Term Case Manager continues to manage the claim. Employer cooperation issues are also referred to the re-employment team.

Recurrence & Work Disruption Team

This Specialty Team makes all decisions involving short-term, long-term and permanent work disruptions including strikes, seasonal layoffs and permanent shut-downs.

It also makes all decisions involving recurrences or secondary conditions that occur *at least three months after* the worker's WSIB benefits ceased, or *at least three months after* a no-lost-time claim was approved. If the recurrence claim is approved, the Recurrence Case Manager makes the initial payment to the worker, and then sends the claim back to the Short Term Case Manager or Long Term Case Manager to manage the claim.

Work Transition Specialists

The WTS helps the WPPs and the Case Manager to facilitate the WT process when the worker has not returned to suitable and available work.

In each case, a claim will transition from a RTWS to a WTS between six and nine months after the date of injury, in conjunction with the claim being transferred from a Short Term Case Manager to a Long Term Case Manager. A referral to a WTS may also be made if the injury employer has identified a potential job opportunity that requires some form of retraining, i.e., short-term training, training-on-the-job, computer skills, etc.

Employer Liaison Specialists

The Employer Liaison Specialist focuses on improving WR outcomes by sharing best practice approaches in WR, and actively supporting employers to become self-sufficient in the development and implementation of disability management and WR programs. They refer employers to the HSAs for all prevention/health and safety issues.

Working with an Employer Liaison Specialist is voluntary.

SIEF Team

Employers seeking SIEF relief should send their written request to the Short Term Case Manager or Long Term Case Manager who will refer that one issue in the claim file to the SIEF adjudication team. The SIEF Case Manager, who is also the person to whom a request for SIEF reconsideration should be directed, signs SIEF decision letters. Employers can contact the Short Term Case Manager or Long Term Case Manager to obtain the contact information for the SIEF Case Manager assigned to a particular file.

SIEF AROs

The WSIB's Appeals Branch has designated SIEF AROs. They are the only individuals on the ARO teams who are authorized to address SIEF appeals, and any appeal that includes a SIEF issue is to be assigned to one of them.

Appeals/FEL Team

This Specialty Team implements all WSIB Appeals Branch decisions and WSIAT decisions that are allowed either in whole or in part. It also makes all decisions involving FEL awards. It does not address issues involving SIEF, pre-1990 claims, claims that are addressed by the Serious Injury Program, or occupational diseases that are adjudicated by the Occupational Diseases and Survivor Benefits Program.

Employer Services Centre

The Employer Services Centre deals with all revenue issues. **Account Analysts** focus on the transaction work such as balance enquiries and address changes. **Account Specialists** are the key decision-makers on all revenue issues including premiums, reconciliations, etc. Employers can call the WSIB's General Enquiry Number at 416-344-1000 or 1-800-387-0080, provide their account number and be referred to an Account Specialist who will address their account issues.

Resources

Office of the Employer Adviser (OEA)
Head Office, 151 Bloor Street West, Suite 704
Toronto, ON M5S 1S4

Advice Centre	Toronto: 416-327-0020 Toll Free: 1-800-387-0774
Fax	Toronto: 416-327-0726
Website	www.employeradviser.ca
E-mail Your Questions	askoea@ontario.ca

Workplace Safety and Insurance Board (WSIB)
200 Front Street West
Toronto, ON M5V 3J1

Main Switchboard and point of entry to the Employer Services Centre	Toronto: 416-344-1000 Toll Free: 1-800-387-0750
Central Claims Fax	Toronto: 416-344-4684 Toll Free: 1-888-313-7373
Website	www.wsib.on.ca

Workplace Safety and Insurance Appeals Tribunal (WSIAT)
505 University Avenue, 7th Floor
Toronto, ON M5G 2P2

General Enquiry	Toronto: 416-314-8800 Toll Free: 1-888-618-8846
Fax	Toronto: 416-326-5164
Website	www.wsiat.on.ca

Fair Practices Commission	http://www.fairpractices.on.ca/
Health & Safety Ontario	www.healthandsafetyontario.ca
Occupational Health and Safety Branch, MOL	1-877-202-0008
Employment Standards Branch, MOL	1-800-531-5551
Ontario Human Rights Commission	http://www.ohrc.on.ca/en

OEA | Office of the Employer Adviser

The Office of the Employer Adviser
is an independent agency of the Ministry of Labour
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For more information, visit

www.employeradviser.ca

or call 1-800-387-0774.

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